

REFERENCE TITLE: **civil actions; false claims actions**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2595

Introduced by
Representatives Patterson, Ash, Heinz: Barnes, Campbell CH, Crump, Farley,
Fleming, Lujan, Pratt, Senators Alvarez, Garcia, Gould, Lopez, Melvin,
Paton, Rios

AN ACT

**AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 21; RELATING
TO FALSE CLAIMS ACTIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, Arizona Revised Statutes, is amended by adding
3 chapter 21, to read:

4 CHAPTER 21

5 FALSE CLAIMS ACT

6 ARTICLE 1. GENERAL PROVISIONS

7 12-3001. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CLAIM" INCLUDES ANY REQUEST OR DEMAND FOR MONEY, PROPERTY OR
10 SERVICES MADE TO ANY EMPLOYEE, OFFICER OR AGENT OF THIS STATE OR ANY
11 POLITICAL SUBDIVISION OF THIS STATE, OR TO ANY CONTRACTOR, GRANTEE OR OTHER
12 RECIPIENT WHETHER UNDER CONTRACT OR NOT IF ANY PORTION OF THE MONEY, PROPERTY
13 OR SERVICES REQUESTED OR DEMANDED ISSUED FROM OR WAS PROVIDED BY THIS STATE
14 OR STATE FUNDS OR BY ANY POLITICAL SUBDIVISION OF THIS STATE OR POLITICAL
15 SUBDIVISION FUNDS.

16 2. "KNOWING" AND "KNOWINGLY" MEAN THAT A PERSON, WITH RESPECT TO
17 INFORMATION, DOES ANY OF THE FOLLOWING:

18 (a) HAS ACTUAL KNOWLEDGE OF THE INFORMATION.

19 (b) ACTS IN DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY OF THE
20 INFORMATION.

21 (c) ACTS IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF THE
22 INFORMATION.

23 3. "POLITICAL SUBDIVISION" MEANS ANY CITY, TOWN OR COUNTY, A SPECIAL
24 TAXING DISTRICT OR ANY OTHER SPECIAL DISTRICT OF A CITY, TOWN OR COUNTY.

25 4. "PROSECUTING AUTHORITY" MEANS A COUNTY ATTORNEY, CITY ATTORNEY OR
26 OTHER LOCAL GOVERNMENT OFFICIAL WHO IS CHARGED WITH INVESTIGATING, FILING AND
27 CONDUCTING CIVIL LEGAL PROCEEDINGS ON BEHALF OF OR IN THE NAME OF A
28 PARTICULAR POLITICAL SUBDIVISION.

29 12-3002. False claims action; damages; civil penalty;
30 applicability

31 A. A PERSON WHO DOES ANY OF THE FOLLOWING IS LIABLE TO THIS STATE OR A
32 POLITICAL SUBDIVISION OF THIS STATE:

33 1. KNOWINGLY PRESENTS OR CAUSES TO BE PRESENTED TO AN OFFICER OR
34 EMPLOYEE OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE A FALSE
35 CLAIM FOR PAYMENT OR APPROVAL.

36 2. KNOWINGLY MAKES, USES OR CAUSES TO BE MADE OR USED A FALSE RECORD
37 OR STATEMENT TO GET A FALSE CLAIM PAID OR APPROVED BY THIS STATE OR ANY
38 POLITICAL SUBDIVISION OF THIS STATE.

39 3. CONSPIRES TO DEFRAUD THIS STATE OR ANY POLITICAL SUBDIVISION OF
40 THIS STATE BY GETTING A FALSE CLAIM ALLOWED OR PAID BY THIS STATE OR ANY
41 POLITICAL SUBDIVISION OF THIS STATE.

42 4. HAS POSSESSION, CUSTODY OR CONTROL OF PUBLIC PROPERTY OR MONEY USED
43 OR TO BE USED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE AND
44 WHO KNOWINGLY DELIVERS OR CAUSES TO BE DELIVERED LESS PROPERTY THAN THE
45 AMOUNT FOR WHICH THE PERSON RECEIVES A CERTIFICATE OR RECEIPT.

1 5. IS AUTHORIZED TO MAKE OR DELIVER A DOCUMENT CERTIFYING RECEIPT OF
2 PROPERTY USED OR TO BE USED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF
3 THIS STATE AND WHO KNOWINGLY MAKES OR DELIVERS A RECEIPT THAT FALSELY
4 REPRESENTS THE PROPERTY USED OR TO BE USED.

5 6. KNOWINGLY BUYS OR RECEIVES, AS A PLEDGE OF AN OBLIGATION OR DEBT,
6 PUBLIC PROPERTY FROM ANY PERSON WHO LAWFULLY MAY NOT SELL OR PLEDGE THE
7 PROPERTY.

8 7. KNOWINGLY MAKES, USES OR CAUSES TO BE MADE OR USED A FALSE RECORD
9 OR STATEMENT TO CONCEAL, AVOID OR DECREASE AN OBLIGATION TO PAY OR TRANSMIT
10 MONEY OR PROPERTY TO THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

11 8. IS A BENEFICIARY OF AN INADVERTENT SUBMISSION OF A FALSE CLAIM TO
12 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE AND WHO SUBSEQUENTLY
13 DISCOVERS THE FALSITY OF THE CLAIM AND FAILS TO DISCLOSE THE FALSE CLAIM TO
14 THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE WITHIN A REASONABLE
15 TIME AFTER DISCOVERY OF THE FALSE CLAIM.

16 B. A PERSON WHO VIOLATES SUBSECTION A IS LIABLE FOR THREE TIMES THE
17 AMOUNT OF DAMAGES THAT THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE
18 SUSTAINS BECAUSE OF THE ACT OF THAT PERSON AND, IS LIABLE FOR THE COSTS OF A
19 CIVIL ACTION BROUGHT TO RECOVER ANY OF THOSE PENALTIES OR DAMAGES AND SHALL
20 BE LIABLE TO THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE FOR A CIVIL
21 PENALTY OF NOT LESS THAN FIVE THOUSAND FIVE HUNDRED DOLLARS AND NOT MORE THAN
22 ELEVEN THOUSAND DOLLARS FOR EACH FALSE CLAIM.

23 C. NOTWITHSTANDING SUBSECTION B, THE COURT SHALL ASSESS NOT LESS THAN
24 TWO TIMES AND NOT MORE THAN THREE TIMES THE AMOUNT OF DAMAGES THAT THIS STATE
25 OR A POLITICAL SUBDIVISION OF THIS STATE SUSTAINS BECAUSE OF THE ACT OF THE
26 PERSON AND MAY NOT ASSESS A CIVIL PENALTY IF THE COURT FINDS ALL OF THE
27 FOLLOWING:

28 1. THE PERSON COMMITTING THE VIOLATION FURNISHED OFFICIALS OF THIS
29 STATE OR A POLITICAL SUBDIVISION OF THIS STATE RESPONSIBLE FOR INVESTIGATING
30 FALSE CLAIMS VIOLATIONS WITH ALL INFORMATION KNOWN TO THAT PERSON ABOUT THE
31 VIOLATION WITHIN THIRTY DAYS AFTER THE DATE ON WHICH THE PERSON FIRST
32 OBTAINED THE INFORMATION.

33 2. THE PERSON FULLY COOPERATED WITH ANY INVESTIGATION OF THE VIOLATION
34 BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

35 3. AT THE TIME THE PERSON FURNISHED THIS STATE OR A POLITICAL
36 SUBDIVISION OF THIS STATE WITH INFORMATION ABOUT THE VIOLATION NO CRIMINAL
37 PROSECUTION, CIVIL ACTION OR ADMINISTRATIVE ACTION HAD COMMENCED WITH RESPECT
38 TO THE VIOLATION AND THE PERSON DID NOT HAVE ACTUAL KNOWLEDGE OF THE
39 EXISTENCE OF AN INVESTIGATION INTO THE VIOLATION.

40 D. LIABILITY UNDER THIS SECTION IS JOINT AND SEVERAL FOR ANY ACT
41 COMMITTED BY TWO OR MORE PERSONS.

42 E. THIS SECTION DOES NOT APPLY TO:

43 1. ANY CONTROVERSY INVOLVING AN AMOUNT OF LESS THAN FIVE HUNDRED
44 DOLLARS IN VALUE. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTROVERSY" MEANS

1 ONE OR MORE FALSE CLAIMS SUBMITTED BY THE SAME PERSON IN VIOLATION OF THIS
2 SECTION.

3 2. CLAIMS, RECORDS OR STATEMENTS THAT ARE MADE PURSUANT TO CHAPTER 7,
4 ARTICLE 2 OF THIS TITLE, TITLE 23, CHAPTER 6 OR TITLE 42 OR 43.

5 ARTICLE 2. INVESTIGATIONS AND PROSECUTIONS

6 12-3010. Investigation and prosecution of false claims:
7 attorney general; prosecuting authority; state
8 funds; political subdivision funds

9 A. THE ATTORNEY GENERAL SHALL DILIGENTLY INVESTIGATE ANY ACT THAT IS
10 LISTED IN SECTION 12-3002 INVOLVING STATE FUNDS. IF THE ATTORNEY GENERAL
11 FINDS THAT A PERSON HAS COMMITTED AN ACT OR IS COMMITTING AN ACT LISTED IN
12 SECTION 12-3002 THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST THAT
13 PERSON.

14 B. IF THE ATTORNEY GENERAL BRINGS A CIVIL ACTION UNDER THIS SECTION ON
15 A CLAIM INVOLVING A POLITICAL SUBDIVISION'S FUNDS AS WELL AS STATE FUNDS THE
16 ATTORNEY GENERAL, ON THE SAME DATE THAT THE COMPLAINT IS FILED IN THE ACTION,
17 SHALL SERVE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, A COPY OF THE
18 COMPLAINT ON THE APPROPRIATE PROSECUTING AUTHORITY.

19 C. THE PROSECUTING AUTHORITY MAY INTERVENE IN AN ACTION BROUGHT BY THE
20 ATTORNEY GENERAL WITHIN SIXTY DAYS AFTER RECEIPT OF THE COMPLAINT PURSUANT TO
21 SUBSECTION B OF THIS SECTION. THEREAFTER, THE COURT MAY PERMIT INTERVENTION
22 IN ACCORDANCE WITH THE RULES OF CIVIL PROCEDURE.

23 D. THE PROSECUTING AUTHORITY OF A POLITICAL SUBDIVISION OF THIS STATE
24 SHALL DILIGENTLY INVESTIGATE ANY ACT THAT IS LISTED IN SECTION 12-3002
25 INVOLVING POLITICAL SUBDIVISION FUNDS. IF THE PROSECUTING AUTHORITY FINDS
26 THAT A PERSON HAS COMMITTED OR IS COMMITTING AN ACT LISTED IN SECTION 12-3002
27 THE PROSECUTING AUTHORITY MAY BRING A CIVIL ACTION AGAINST THAT PERSON.

28 E. IF THE PROSECUTING AUTHORITY BRINGS A CIVIL ACTION UNDER THIS
29 SECTION ON A CLAIM INVOLVING STATE FUNDS AS WELL AS POLITICAL SUBDIVISION
30 FUNDS, THE PROSECUTING AUTHORITY, ON THE SAME DATE THAT THE COMPLAINT IS
31 FILED IN THIS ACTION, SHALL SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY
32 GENERAL.

33 F. WITHIN SIXTY DAYS AFTER RECEIVING THE COMPLAINT PURSUANT TO
34 SUBSECTION E OF THIS SECTION THE ATTORNEY GENERAL SHALL DO EITHER OF THE
35 FOLLOWING:

36 1. NOTIFY THE COURT THAT IT INTENDS TO PROCEED WITH THE ACTION, IN
37 WHICH CASE THE ATTORNEY GENERAL SHALL ASSUME PRIMARY RESPONSIBILITY FOR
38 CONDUCTING THE ACTION AND THE PROSECUTING AUTHORITY SHALL HAVE THE RIGHT TO
39 CONTINUE AS A PARTY.

40 2. NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION, IN WHICH
41 CASE THE PROSECUTING AUTHORITY SHALL HAVE THE RIGHT TO CONDUCT THE ACTION.

42 G. WITHIN SIXTY DAYS AFTER RECEIVING A COMPLAINT PURSUANT TO SECTION
43 12-3011 ALLEGING VIOLATIONS THAT INVOLVE STATE FUNDS BUT NOT POLITICAL
44 SUBDIVISION FUNDS THE ATTORNEY GENERAL SHALL DO EITHER OF THE FOLLOWING:

1 1. NOTIFY THE COURT THAT IT INTENDS TO PROCEED WITH THE ACTION, IN
2 WHICH CASE THE SEAL SHALL BE LIFTED.

3 2. NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION, IN WHICH
4 CASE THE SEAL SHALL BE LIFTED AND THE PRIVATE PARTY PLAINTIFF, IF ANY, MAY
5 CONDUCT THE ACTION PURSUANT TO SECTION 12-3011.

6 H. WITHIN FIFTEEN DAYS AFTER RECEIVING A COMPLAINT PURSUANT TO SECTION
7 12-3011 ALLEGING VIOLATIONS THAT EXCLUSIVELY INVOLVE POLITICAL SUBDIVISION
8 FUNDS THE ATTORNEY GENERAL SHALL FORWARD THE COMPLAINT AND WRITTEN DISCLOSURE
9 TO THE APPROPRIATE PROSECUTING AUTHORITY FOR DISPOSITION AND SHALL NOTIFY THE
10 PRIVATE PARTY PLAINTIFF OF THE TRANSFER.

11 I. WITHIN FORTY-FIVE DAYS AFTER THE ATTORNEY GENERAL FORWARDS THE
12 COMPLAINT AND WRITTEN DISCLOSURE PURSUANT TO SUBSECTION J OF THIS SECTION,
13 THE PROSECUTING AUTHORITY SHALL DO EITHER OF THE FOLLOWING:

14 1. NOTIFY THE COURT THAT IT INTENDS TO PROCEED WITH THE ACTION, IN
15 WHICH CASE THE SEAL SHALL BE LIFTED.

16 2. NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION, IN WHICH
17 CASE THE SEAL SHALL BE LIFTED AND THE PRIVATE PARTY PLAINTIFF MAY CONDUCT THE
18 ACTION.

19 J. WITHIN FIFTEEN DAYS AFTER RECEIVING A COMPLAINT PURSUANT TO SECTION
20 12-3011 ALLEGING VIOLATIONS THAT INVOLVE BOTH STATE AND POLITICAL SUBDIVISION
21 FUNDS THE ATTORNEY GENERAL SHALL FORWARD COPIES OF THE COMPLAINT AND WRITTEN
22 DISCLOSURE TO THE APPROPRIATE PROSECUTING AUTHORITY AND SHALL COORDINATE ITS
23 REVIEW AND INVESTIGATION WITH THOSE OF THE PROSECUTING AUTHORITY.

24 K. WITHIN SIXTY DAYS AFTER RECEIVING A COMPLAINT PURSUANT TO SECTION
25 12-3011 ALLEGING VIOLATIONS THAT INVOLVE BOTH STATE AND POLITICAL SUBDIVISION
26 FUNDS THE ATTORNEY GENERAL SHALL DO EITHER OF THE FOLLOWING:

27 1. NOTIFY THE COURT THAT IT INTENDS TO PROCEED WITH THE ACTION, IN
28 WHICH CASE THE SEAL SHALL BE LIFTED.

29 2. NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION BUT THAT
30 THE PROSECUTING AUTHORITY OF THE POLITICAL SUBDIVISION INVOLVED INTENDS TO
31 PROCEED WITH THE ACTION, IN WHICH CASE THE SEAL SHALL BE LIFTED AND THE
32 PROSECUTING AUTHORITY SHALL CONDUCT THE ACTION.

33 3. NOTIFY THE COURT THAT BOTH IT AND THE PROSECUTING AUTHORITY DECLINE
34 TO TAKE OVER THE ACTION, IN WHICH CASE THE SEAL SHALL BE LIFTED AND THE
35 PRIVATE PARTY PLAINTIFF MAY CONDUCT THE ACTION.

36 L. IF THE ATTORNEY GENERAL PROCEEDS WITH THE ACTION PURSUANT TO
37 SUBSECTION K, PARAGRAPH 1 OF THIS SECTION, THE POLITICAL SUBDIVISION SHALL BE
38 PERMITTED TO INTERVENE IN THE ACTION WITHIN SIXTY DAYS AFTER THE ATTORNEY
39 GENERAL NOTIFIES THE COURT OF ITS INTENTIONS. THE COURT MAY AUTHORIZE
40 INTERVENTION IN ACCORDANCE WITH THE RULES OF CIVIL PROCEDURE.

41 M. ON A SHOWING OF GOOD CAUSE AND REASONABLE DILIGENCE IN ITS
42 INVESTIGATION THE ATTORNEY GENERAL OR THE PROSECUTING AUTHORITY OF A
43 POLITICAL SUBDIVISION MAY MOVE THE COURT FOR EXTENSIONS OF THE TIME DURING
44 WHICH A COMPLAINT REMAINS UNDER SEAL BUT IN NO EVENT MAY THE COMPLAINT REMAIN
45 UNDER SEAL FOR LONGER THAN NINETY DAYS.

12-3011. False claims: qui tam actions

A. A PRIVATE PERSON MAY BRING A QUI TAM ACTION FOR AN ACT THAT IS COMMITTED OR HAS BEEN COMMITTED BY ANOTHER PERSON AND THAT IS LISTED IN SECTION 12-3002 FOR THE PERSON AND EITHER FOR THE STATE OF ARIZONA IN THE NAME OF THE STATE, IF ANY STATE FUNDS ARE INVOLVED, OR FOR A POLITICAL SUBDIVISION IN THE NAME OF THE POLITICAL SUBDIVISION, IF POLITICAL SUBDIVISION FUNDS ARE EXCLUSIVELY INVOLVED. THE ACTION MAY BE DISMISSED ONLY WITH THE WRITTEN CONSENT OF THE COURT TAKING INTO ACCOUNT THE BEST INTEREST OF THE PARTIES INVOLVED. THE COMPLAINT SHALL BE FILED IN SUPERIOR COURT IN CAMERA AND MAY REMAIN UNDER SEAL FOR UP TO SIXTY DAYS. THE DEFENDANT SHALL NOT BE SERVED UNTIL AFTER THE COMPLAINT IS UNSEALED.

B. ON THE SAME DAY AS THE COMPLAINT IS FILED PURSUANT TO SUBSECTION A OF THIS SECTION THE PLAINTIFF SHALL SERVE ON THE ATTORNEY GENERAL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, A COPY OF THE COMPLAINT AND A WRITTEN DISCLOSURE OF SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THE PERSON POSSESSES.

C. AFTER A PERSON BRINGS AN ACTION UNDER THIS SECTION NO OTHER PERSON MAY BRING A RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING ACTION.

D. A COURT DOES NOT HAVE JURISDICTION OVER AN ACTION THAT IS:

1. BROUGHT UNDER SUBSECTION A OF THIS SECTION AGAINST A MEMBER OF THE SENATE OR HOUSE OF REPRESENTATIVES, A MEMBER OF THE JUDICIARY, AN ELECTED OFFICIAL IN THE EXECUTIVE BRANCH OR A MEMBER OF THE GOVERNING BODY OF ANY POLITICAL SUBDIVISION OF THIS STATE IF THE ACTION IS BASED ON EVIDENCE OR INFORMATION THAT IS KNOWN TO THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE WHEN THE ACTION WAS BROUGHT.

2. BASED ON THE PUBLIC DISCLOSURE OF ALLEGATIONS OR TRANSACTIONS IN A CRIMINAL, CIVIL OR ADMINISTRATIVE HEARING IN AN INVESTIGATION, REPORT, HEARING OR AUDIT CONDUCTED BY OR AT THE REQUEST OF THE SENATE, THE HOUSE OF REPRESENTATIVES, THE AUDITOR OR GOVERNING BODY OF A POLITICAL SUBDIVISION OF THIS STATE OR FROM THE NEWS MEDIA UNLESS THE ACTION IS BROUGHT BY THE ATTORNEY GENERAL OR THE PROSECUTING AUTHORITY OF A POLITICAL SUBDIVISION OR THE PERSON BRINGING THE ACTION IS AN ORIGINAL SOURCE OF THE INFORMATION. FOR THE PURPOSES OF THIS PARAGRAPH, "ORIGINAL SOURCE" MEANS AN INDIVIDUAL WHO HAS DIRECT AND INDEPENDENT KNOWLEDGE OF THE INFORMATION ON WHICH THE ALLEGATIONS ARE BASED, WHO VOLUNTARILY PROVIDED THE INFORMATION TO THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE BEFORE FILING AN ACTION BASED ON THAT INFORMATION AND WHOSE INFORMATION PROVIDED THE BASIS OR CATALYST FOR THE INVESTIGATION, HEARING, AUDIT OR REPORT THAT LED TO THE PUBLIC DISCLOSURE.

3. BROUGHT UNDER SUBSECTION A OF THIS SECTION BASED ON EITHER:

(a) INFORMATION DISCOVERED BY A PRESENT OR FORMER EMPLOYEE OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE DURING THE COURSE OF THE PERSON'S EMPLOYMENT UNLESS THAT EMPLOYEE FIRST IN GOOD FAITH EXHAUSTED EXISTING INTERNAL PROCEDURES FOR REPORTING AND SEEKING RECOVERY OF SUCH FALSELY CLAIMED SUMS THROUGH OFFICIAL CHANNELS AND UNLESS THIS STATE OR A

1 POLITICAL SUBDIVISION OF THIS STATE FAILED TO ACT ON THE INFORMATION PROVIDED
2 WITHIN A REASONABLE PERIOD OF TIME.

3 (b) ALLEGATIONS OR TRANSACTIONS THAT ARE THE SUBJECT OF A CIVIL SUIT
4 OR AN ADMINISTRATIVE CIVIL PENALTY PROCEEDING IN WHICH THIS STATE OR A
5 POLITICAL SUBDIVISION OF THIS STATE IS ALREADY A PARTY.

6 E. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE PROCEEDS
7 WITH THE ACTION IT SHALL HAVE THE PRIMARY RESPONSIBILITY FOR PROSECUTING THE
8 ACTION. THE PLAINTIFF SHALL HAVE THE RIGHT TO CONTINUE AS A FULL PARTY TO
9 THE ACTION.

10 F. THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY SEEK TO
11 DISMISS THE ACTION FOR GOOD CAUSE NOTWITHSTANDING THE OBJECTIONS OF THE
12 PLAINTIFF IF THE PLAINTIFF HAS BEEN NOTIFIED BY THE STATE OR POLITICAL
13 SUBDIVISION OF THE FILING OF THE MOTION AND THE COURT HAS PROVIDED THE
14 PLAINTIFF WITH AN OPPORTUNITY TO OPPOSE THE MOTION AND PRESENT EVIDENCE AT A
15 HEARING.

16 G. THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE MAY SETTLE THE
17 ACTION WITH THE DEFENDANT NOTWITHSTANDING THE OBJECTIONS OF THE PLAINTIFF IF
18 THE COURT DETERMINES AFTER A HEARING PROVIDING THE PLAINTIFF AN OPPORTUNITY
19 TO PRESENT EVIDENCE THAT THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND
20 REASONABLE UNDER ALL OF THE CIRCUMSTANCES.

21 H. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE ELECTS NOT
22 TO PROCEED THE PLAINTIFF SHALL HAVE THE SAME RIGHT TO CONDUCT THE ACTION AS
23 THE ATTORNEY GENERAL OR PROSECUTING AUTHORITY WOULD HAVE HAD IF IT HAD CHOSEN
24 TO PROCEED UNDER SECTION 12-3010. IF THIS STATE OR A POLITICAL SUBDIVISION
25 OF THIS STATE REQUESTS, AND AT ITS EXPENSE, THE STATE OR POLITICAL
26 SUBDIVISION SHALL BE SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION
27 AND SUPPLIED WITH COPIES OF ALL DEPOSITION TRANSCRIPTS.

28 I. ON TIMELY APPLICATION, THE COURT SHALL PERMIT THIS STATE OR
29 POLITICAL SUBDIVISION OF THIS STATE TO INTERVENE IN AN ACTION THAT IT HAD
30 INITIALLY DECLINED TO TAKE OVER IF THE INTEREST OF THIS STATE OR A POLITICAL
31 SUBDIVISION OF THIS STATE IN RECOVERY OF THE PROPERTY OR FUNDS INVOLVED IS
32 NOT BEING ADEQUATELY REPRESENTED BY THE PLAINTIFF.

33 J. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE IS ALLOWED
34 TO INTERVENE PURSUANT TO SUBSECTION I OF THIS SECTION THE PLAINTIFF SHALL
35 RETAIN PRINCIPAL RESPONSIBILITY FOR THE ACTION AND THE RECOVERY OF THE
36 PARTIES SHALL BE DETERMINED AS IF THIS STATE OR A POLITICAL SUBDIVISION OF
37 THIS STATE HAD ELECTED NOT TO PROCEED.

38 K. THE COURT MAY STAY DISCOVERY OF THE PERSON INITIATING THE ACTION
39 FOR A PERIOD OF NOT MORE THAN SIXTY DAYS IF THE ATTORNEY GENERAL OR
40 PROSECUTING AUTHORITY SHOWS THAT DISCOVERY WOULD INTERFERE WITH AN
41 INVESTIGATION OR PROSECUTION OF A CRIMINAL OR CIVIL MATTER ARISING OUT OF THE
42 SAME FACTS REGARDLESS OF WHETHER THE ATTORNEY GENERAL OR PROSECUTING
43 AUTHORITY PROCEEDS WITH THE ACTION. THE COURT SHALL CONDUCT THIS SHOWING IN
44 CAMERA. THE COURT MAY EXTEND THE SIXTY DAY PERIOD ON A FURTHER SHOWING IN
45 CAMERA THAT THE ATTORNEY GENERAL OR PROSECUTING AUTHORITY HAS PURSUED THE

1 CRIMINAL OR CIVIL INVESTIGATION OR PROCEEDINGS WITH REASONABLE DILIGENCE AND
2 THAT ANY PROPOSED DISCOVERY IN THE CIVIL ACTION WILL INTERFERE WITH THE
3 ONGOING CRIMINAL OR CIVIL INVESTIGATION OR PROCEEDINGS.

4 L. ON A SHOWING BY THE ATTORNEY GENERAL OR PROSECUTING AUTHORITY THAT
5 UNRESTRICTED PARTICIPATION DURING THE COURSE OF THE LITIGATION BY THE PERSON
6 INITIATING THE ACTION WOULD INTERFERE WITH OR UNDULY DELAY THE ATTORNEY
7 GENERAL'S OR PROSECUTING AUTHORITY'S PROSECUTION OF THE CASE OR WOULD BE
8 REPETITIOUS, IRRELEVANT OR FOR PURPOSES OF HARASSMENT, THE COURT MAY LIMIT
9 THE PERSON'S PARTICIPATION BY:

- 10 1. LIMITING THE NUMBER OF WITNESSES THE PERSON MAY CALL.
- 11 2. LIMITING THE LENGTH OF THE TESTIMONY OF CALLED WITNESSES.
- 12 3. LIMITING THE PERSON'S CROSS-EXAMINATION OF WITNESSES.
- 13 4. OTHERWISE LIMITING THE PARTICIPATION BY THE PERSON IN THE
14 LITIGATION.

15 12-3012. Awards; apportionment of proceeds; fees and costs;
16 definition

17 A. THE COURT SHALL APPORTION ANY PROCEEDS IN A CIVIL ACTION FILED
18 PURSUANT TO SECTION 12-3010 IN THE FOLLOWING MANNER:

19 1. IF THE ATTORNEY GENERAL INITIATES AN ACTION PURSUANT TO SECTION
20 12-3010, SUBSECTION A OR ASSUMES CONTROL OF AN ACTION INITIATED BY A
21 PROSECUTING AUTHORITY PURSUANT TO SECTION 12-3010, SUBSECTION F, PARAGRAPH 1,
22 THE ATTORNEY GENERAL SHALL RECEIVE THIRTY-THREE PER CENT OF THE PROCEEDS OF
23 THE ACTION OR SETTLEMENT OF THE CLAIM AND SHALL USE THE MONIES TO SUPPORT ITS
24 ONGOING INVESTIGATION AND PROSECUTION OF FALSE CLAIMS.

25 2. IF A PROSECUTING AUTHORITY INITIATES AND CONDUCTS AN ACTION
26 PURSUANT TO SECTION 12-3010, SUBSECTION D THE PROSECUTING AUTHORITY SHALL
27 RECEIVE THIRTY-THREE PER CENT OF THE PROCEEDS OF THE ACTION OR SETTLEMENT OF
28 THE CLAIM AND SHALL USE THE MONIES TO SUPPORT ITS ONGOING INVESTIGATION AND
29 PROSECUTION OF FALSE CLAIMS.

30 3. IF A PROSECUTING AUTHORITY INTERVENES IN AN ACTION INITIATED BY THE
31 ATTORNEY GENERAL PURSUANT TO SECTION 12-3010, SUBSECTION C OR REMAINS A PARTY
32 TO AN ACTION ASSUMED BY THE ATTORNEY GENERAL PURSUANT TO SECTION 12-3010,
33 SUBSECTION F, PARAGRAPH 1 THE COURT MAY AWARD THE PROSECUTING AUTHORITY A
34 PORTION OF THE ATTORNEY GENERAL'S RECOVERY UNDER PARAGRAPH 1 TAKING INTO
35 ACCOUNT THE PROSECUTING AUTHORITY'S ROLE IN INVESTIGATING AND CONDUCTING THE
36 ACTION.

37 4. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE PROCEEDS
38 WITH AN ACTION BROUGHT BY A PRIVATE PARTY PLAINTIFF UNDER SECTION 12-3011,
39 THE PRIVATE PARTY PLAINTIFF IS SUBJECT TO PARAGRAPHS 6 AND 7 AND SHALL
40 RECEIVE AT LEAST FIFTEEN PER CENT BUT NOT MORE THAN THIRTY-THREE PER CENT OF
41 THE PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM DEPENDING ON THE EXTENT
42 TO WHICH THE PLAINTIFF SUBSTANTIALLY CONTRIBUTED TO THE PROSECUTION OF THE
43 ACTION. IF THE ATTORNEY GENERAL OR THE PROSECUTING AUTHORITY CONDUCTS THE
44 ACTION, IT SHALL RECEIVE A FIXED THIRTY-THREE PER CENT OF THE PROCEEDS OF THE
45 ACTION OR SETTLEMENT OF THE CLAIM AND SHALL USE THE MONIES TO SUPPORT ITS

1 ONGOING INVESTIGATION AND PROSECUTION OF FALSE CLAIMS MADE AGAINST THIS STATE
2 OR A POLITICAL SUBDIVISION OF THIS STATE. IF BOTH THE ATTORNEY GENERAL AND A
3 PROSECUTING AUTHORITY ARE INVOLVED IN A QUI TAM ACTION PURSUANT TO SECTION
4 12-3011, THE COURT MAY AWARD THE PROSECUTING AUTHORITY A PORTION OF THE
5 ATTORNEY GENERAL'S RECOVERY UNDER PARAGRAPH 1 TAKING INTO ACCOUNT THE
6 PROSECUTING AUTHORITY'S CONTRIBUTION TO INVESTIGATING AND CONDUCTING THE
7 ACTION.

8 5. IF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE DOES NOT
9 PROCEED WITH AN ACTION UNDER SECTION 12-3010 THE PRIVATE PARTY PLAINTIFF,
10 SUBJECT TO PARAGRAPHS 6 AND 7, SHALL RECEIVE AN AMOUNT THAT THE COURT DECIDES
11 IS REASONABLE FOR COLLECTING THE CIVIL PENALTY AND DAMAGES ON BEHALF OF THE
12 GOVERNMENT. THE AMOUNT SHALL NOT BE LESS THAN TWENTY-FIVE PER CENT AND NOT
13 MORE THAN FIFTY PER CENT OF THE PROCEEDS OF THE ACTION OR SETTLEMENT AND
14 SHALL BE PAID OUT OF THE PROCEEDS.

15 6. IF SECTION 12-3011, SUBSECTION D, PARAGRAPH 3, SUBDIVISION (a)
16 APPLIES, THE PRESENT OR FORMER EMPLOYEE OF THIS STATE OR A POLITICAL
17 SUBDIVISION OF THIS STATE IS NOT ENTITLED TO ANY MINIMUM GUARANTEED RECOVERY
18 FROM THE PROCEEDS. THE COURT MAY AWARD THE PLAINTIFF THOSE SUMS FROM THE
19 PROCEEDS AS IT CONSIDERS APPROPRIATE BUT SHALL NOT AWARD MORE THAN
20 THIRTY-THREE PER CENT OF THE PROCEEDS IF THIS STATE OR A POLITICAL
21 SUBDIVISION OF THIS STATE GOES FORTH WITH THE ACTION OR FIFTY PER CENT IF
22 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE DECLINES TO GO FORTH WITH
23 THE ACTION, TAKING INTO ACCOUNT THE SIGNIFICANCE OF THE INFORMATION, THE ROLE
24 OF THE QUI TAM PLAINTIFF IN ADVANCING THE CASE TO LITIGATION AND THE SCOPE OF
25 AND RESPONSE TO THE EMPLOYEE'S ATTEMPTS TO REPORT AND GAIN RECOVERY OF THE
26 FALSELY CLAIMED FUNDS THROUGH OFFICIAL CHANNELS.

27 7. IF THE COURT FINDS THE ACTION IS BASED PRIMARILY ON INFORMATION
28 FROM A PRESENT OR FORMER EMPLOYEE WHO ACTIVELY PARTICIPATED IN THE FRAUDULENT
29 ACTIVITY THE EMPLOYEE SHALL NOT BE ENTITLED TO ANY MINIMUM GUARANTEED
30 RECOVERY FROM THE PROCEEDS. THE COURT MAY AWARD THE PLAINTIFF SUCH SUMS FROM
31 THE PROCEEDS AS IT CONSIDERS APPROPRIATE BUT SHALL NOT AWARD MORE THAN
32 THIRTY-THREE PER CENT OF THE PROCEEDS IF THIS STATE OR A POLITICAL
33 SUBDIVISION OF THIS STATE GOES FORTH WITH THE ACTION OR FIFTY PER CENT IF
34 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE DECLINES TO GO FORTH WITH
35 THE ACTION, TAKING INTO ACCOUNT THE SIGNIFICANCE OF THE INFORMATION, THE ROLE
36 OF THE PLAINTIFF IN ADVANCING THE CASE TO LITIGATION, THE SCOPE OF THE
37 PRESENT OR PAST EMPLOYEE'S INVOLVEMENT IN THE FRAUDULENT ACTIVITY, THE
38 EMPLOYEE'S ATTEMPTS TO AVOID OR RESIST THE FRAUDULENT ACTIVITY AND ALL OTHER
39 CIRCUMSTANCES SURROUNDING THE ACTIVITY.

40 B. THE PORTION OF THE RECOVERY NOT DISTRIBUTED PURSUANT TO SUBSECTION
41 A, PARAGRAPHS 3, 4, 5, 6 AND 7 OF THIS SECTION REVERTS TO THE STATE IF THE
42 UNDERLYING FALSE CLAIMS INVOLVED STATE FUNDS EXCLUSIVELY AND TO THE POLITICAL
43 SUBDIVISION IF THE UNDERLYING FALSE CLAIMS INVOLVED POLITICAL SUBDIVISION
44 FUNDS EXCLUSIVELY. IF THE VIOLATION INVOLVED BOTH STATE AND POLITICAL
45 SUBDIVISION FUNDS THE COURT SHALL MAKE AN APPORTIONMENT BETWEEN THE STATE AND

POLITICAL SUBDIVISION BASED ON THEIR RELATIVE SHARES OF THE FUNDS FALSELY CLAIMED.

C. IF THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR THE PRIVATE PARTY PLAINTIFF PREVAILS IN OR SETTLES ANY QUI TAM ACTION UNDER SECTION 12-3011 THE COURT SHALL AWARD THE PLAINTIFF REASONABLE EXPENSES THAT THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED, REASONABLE COSTS AND ATTORNEY FEES AGAINST THE DEFENDANT. UNDER NO CIRCUMSTANCES SHALL THE EXPENSES, COSTS AND FEES BE THE RESPONSIBILITY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

D. IF THE STATE OR A POLITICAL SUBDIVISION OF THIS STATE DOES NOT PROCEED WITH THE ACTION AND THE PLAINTIFF CONDUCTS THE ACTION THE COURT MAY AWARD TO THE DEFENDANT ITS REASONABLE ATTORNEY FEES AND EXPENSES IF THE DEFENDANT PREVAILS IN THE ACTION AND THE COURT FINDS THAT THE CLAIM OF THE PLAINTIFF WAS CLEARLY FRIVOLOUS, CLEARLY VEXATIOUS OR BROUGHT SOLELY FOR PURPOSES OF HARASSMENT.

E. FOR THE PURPOSES OF THIS SECTION, "PROCEEDS" INCLUDES CIVIL PENALTIES AND DOUBLE OR TREBLE DAMAGES PURSUANT TO SECTION 12-3002.

12-3013. Statute of limitations; burden of proof; use of criminal conviction

A. A CIVIL ACTION PURSUANT TO SECTION 12-3010 OR 12-3011 MAY NOT BE FILED MORE THAN THREE YEARS AFTER THE DATE OF DISCOVERY BY AN OFFICIAL OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE CHARGED WITH THE RESPONSIBILITY TO ACT IN THE CIRCUMSTANCES OR NOT MORE THAN TEN YEARS AFTER THE DATE ON WHICH THE ACT IS COMMITTED.

B. A CIVIL ACTION PURSUANT TO SECTION 12-3010 OR 12-3011 MAY BE BROUGHT FOR ACTIVITY THAT OCCURRED BEFORE THE EFFECTIVE DATE OF THIS ACT IF THE LIMITATIONS PERIOD UNDER SUBSECTION A OF THIS SECTION HAS NOT LAPSED.

C. IN ANY ACTION PURSUANT TO SECTION 12-3010 OR 12-3011 THIS STATE, THE POLITICAL SUBDIVISION OF THIS STATE OR THE PLAINTIFF SHALL BE REQUIRED TO PROVE ALL ESSENTIAL ELEMENTS OF THE CAUSE OF ACTION INCLUDING DAMAGES BY A PREPONDERANCE OF THE EVIDENCE.

D. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A GUILTY VERDICT RENDERED IN A CRIMINAL PROCEEDING CHARGING FALSE STATEMENTS OR FRAUD, WHETHER ON A VERDICT AFTER TRIAL OR ON A PLEA OF GUILTY OR NO CONTEST, SHALL ESTOP THE DEFENDANT FROM DENYING THE ESSENTIAL ELEMENTS OF THE OFFENSE IN ANY ACTION THAT INVOLVES THE SAME TRANSACTION AS IN THE CRIMINAL PROCEEDING AND THAT IS BROUGHT PURSUANT TO SECTION 12-3010, SUBSECTION A OR D OR SECTION 12-3011.

ARTICLE 3. EMPLOYER INTERFERENCE

12-3020. Employer interference with employee disclosures; liability; civil action

A. AN EMPLOYER SHALL NOT MAKE, ADOPT OR ENFORCE ANY RULE, REGULATION OR POLICY PREVENTING AN EMPLOYEE FROM DISCLOSING INFORMATION TO A GOVERNMENT OR LAW ENFORCEMENT AGENCY OR FROM ACTING IN FURTHERANCE OF A FALSE CLAIMS ACTION INCLUDING INVESTIGATING, INITIATING, TESTIFYING OR ASSISTING IN AN ACTION FILED OR TO BE FILED PURSUANT TO SECTION 12-3010 OR 12-3011.

1 B. AN EMPLOYER SHALL NOT DISCHARGE, DEMOTE, SUSPEND, THREATEN, HARASS,
2 DENY PROMOTION TO OR IN ANY OTHER MANNER DISCRIMINATE AGAINST AN EMPLOYEE IN
3 THE TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF LAWFUL ACTS DONE BY THE
4 EMPLOYEE ON BEHALF OF THE EMPLOYEE OR OTHERS IN DISCLOSING INFORMATION TO A
5 GOVERNMENT OR LAW ENFORCEMENT AGENCY OR IN FURTHERING OF A FALSE CLAIMS
6 ACTION INCLUDING INVESTIGATION FOR, INITIATION OF, TESTIMONY FOR OR
7 ASSISTANCE IN AN ACTION FILED OR TO BE FILED PURSUANT TO SECTION 12-3010 OR
8 12-3011.

9 C. AN EMPLOYER WHO VIOLATES SUBSECTION B OF THIS SECTION IS LIABLE FOR
10 ALL RELIEF NECESSARY TO MAKE THE EMPLOYEE WHOLE INCLUDING REINSTATEMENT WITH
11 THE SAME SENIORITY STATUS THAT THE EMPLOYEE WOULD HAVE HAD BUT FOR THE
12 DISCRIMINATION, TWO TIMES THE AMOUNT OF BACK PAY, INTEREST ON THE BACK PAY,
13 COMPENSATION FOR ANY SPECIAL DAMAGE SUSTAINED AS A RESULT OF THE
14 DISCRIMINATION AND, WHERE APPROPRIATE, PUNITIVE DAMAGES. THE DEFENDANT SHALL
15 BE REQUIRED TO PAY LITIGATION COSTS AND REASONABLE ATTORNEY FEES. AN
16 EMPLOYEE MAY BRING AN ACTION IN SUPERIOR COURT FOR THE RELIEF PROVIDED IN
17 THIS SECTION.

18 D. AN EMPLOYEE WHO IS DISCHARGED, DEMOTED, SUSPENDED, HARASSED, DENIED
19 PROMOTION OR IN ANY OTHER MANNER DISCRIMINATED AGAINST IN THE TERMS AND
20 CONDITIONS OF EMPLOYMENT BY HIS EMPLOYER BECAUSE OF PARTICIPATION IN CONDUCT
21 THAT DIRECTLY OR INDIRECTLY RESULTED IN A FALSE CLAIM BEING SUBMITTED TO THIS
22 STATE OR A POLITICAL SUBDIVISION OF THIS STATE IS ENTITLED TO THE REMEDIES
23 UNDER SUBSECTION C OF THIS SECTION IF BOTH OF THE FOLLOWING OCCUR:

24 1. THE EMPLOYEE VOLUNTARILY DISCLOSED INFORMATION TO A GOVERNMENT OR
25 LAW ENFORCEMENT AGENCY OR ACTED IN FURTHERANCE OF A FALSE CLAIMS ACTION
26 INCLUDING INVESTIGATION FOR, INITIATION OF, TESTIMONY FOR OR ASSISTANCE IN AN
27 ACTION FILED OR TO BE FILED.

28 2. THE EMPLOYEE HAD BEEN HARASSED, THREATENED WITH TERMINATION OR
29 DEMOTION OR OTHERWISE COERCED BY THE EMPLOYER OR ITS MANAGEMENT INTO ENGAGING
30 IN THE FRAUDULENT ACTIVITY IN THE FIRST PLACE.